

Q: Can the leases in question simply be terminated?

A: Maybe...it depends on the terms of the lease AND the terms of the federal CECRA program.

First Principles

- I. READ the Lease – the terms and conditions of the lease govern the relationship
- II. Normally, the tenant has to be in default before a lease can be terminated
 - Notice given, cure period to remedy default, etc.
 - Not all defaults give rise to termination rights – depends on the wording of the lease
 - BUT, in the presented scenarios, there may not be any defaults and therefore Cowboy Jim would be in breach of lease if he simply terminates the lease unilaterally...
- III. Termination of lease v. seizure of tenant's goods (distrain)
 - Inconsistent remedies so be careful
- IV. Termination must include right to claim damages
 - Changing locks is a termination so proceed with caution
- V. CONSIDER CECRA – if there is an eviction contrary to rules of the program, loan may need to be repaid
 - Otherwise, loan forgiven as at end of the year...

Hair Salon

- Stopped operating – default?
- Partial payment of rent – default?
- Can equipment be seized to pay rent?
- Affirmation of lease vs. Termination
- Strategic Considerations – best of both worlds?
- CECRA considerations

Laundromat

- Default by not paying September rent but Oct rent paid – impact of that payment?
- Strategic considerations – opportunity to relet premises quickly
- CECRA consideration

Yoga Studio

- Reopened but not paying rent – default?
- CECRA impact? Default for not paying 25%
- Property to distraint?
- Time to ready premises for relet

Other Considerations

Damages for Breach of Lease or Injunction

- If Cowboy Jim chooses to terminate where no right exists he clearly will be responsible or liable to the tenant for damages for breach of the lease.
- An injunction restraining Cowboy Jim from terminating the lease may be granted

Other Covenants

- Has the tenant honoured all other covenants such as a use clause, assignment, subletting

Relief from Forfeiture

- The tenant may be entitled to seek relief from forfeiture from the court.
 - Application to court seeking relief – condition of any such order would be for tenant to remedy default

Rent Guarantees

- Cowboy Jim needs to consider if there are any rent guarantees in place which may be jeopardized depending on how he deals with tenant – give notice to guarantor

Commercial Tenancy Act

- Do you need a court order for possession?
- Depends on:
 - Strength of terms of lease
 - Difficult tenants

PRESENTERS

If you require further information about anything covered in this handout, we would be pleased to discuss with you further.



Michael B. Morgan
Partner
604.631.9227
mmorgan@lawsonlundell.com



Camille Chisholm
Associate
604.631.9219
cchisholm@lawsonlundell.com